

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)	
)	
Applications of Tribune Media Company)	MB Docket No. 17-179
and Sinclair Broadcast Group, Inc.)	
For Consent to Transfer Control of)	
Licenses and Authorizations)	
)	
)	

**APPLICANTS' JOINT OPPOSITION
TO MOTION FOR ADDITIONAL INFORMATION AND DOCUMENTS
AND EXTENSION OF TIME**

Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune,” and together with Sinclair, the “Applicants”), pursuant to Section 1.45 of the Commission’s rules,¹ hereby oppose the “Motion for Additional Information and Documents and Extension of Time” filed in the captioned matter on July 12, 2017 (the “Motion”), by DISH Network L.L.C. (“DISH”), American Cable Association (“ACA”), and Public Knowledge (collectively, the “Movants”).²

Movants ask the Commission to modify the pleading cycle established in this proceeding³ and defer its consideration of the captioned applications (the “Applications”) by (1)

¹ 47 C.F.R. § 1.45(d).

² NTCA–The Rural Broadband Association and Common Cause each filed comments in support of the Motion, which in substance repeated the Motion’s arguments. Letter from Todd O’Boyle, Common Cause, to Chairman Ajit Pai, MB Docket No. 17-179 (July 17, 2017); Comments of NTCA–The Rural Broadband Association in Support of Dish Network, *et. al.* Motion for Additional Information and Documents and Extension of Time, MB Docket No. 17-179 (July 14, 2017).

³ *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Permit-But-Disclose Ex Parte Status for the Proceeding*, Public Notice, MB Docket No. 17-179, DA 17-647 (MB July 6, 2017)” (“Public Notice”).

extending the deadline for filing petitions to deny and opening comments to 30 days following Movants' access to confidential failing station financial information already filed with the Commission, and (2) extending the deadline for filing replies to oppositions or comments until the Movants have reviewed certain additional information that has not yet been filed with, or even requested by, the Commission. The Commission should dismiss or deny the Motion because Movants (1) have not provided a compelling reason why an extension of time for petitions to deny or opening comments should be granted; and (2) their requests for information and for an extension of the time for replies to oppositions or comments are not supported by law or precedent and are premature at best.

The relief sought here is contrary to the well-established procedures that the Commission and its staff employ in developing the record for review of proposed transactions. Under those procedures:

- First, once staff have reviewed an application and determined that it is acceptable for filing, typically the relevant bureau (in this case, the Media Bureau) establishes a pleading cycle during which third parties may file petitions or comments, and the applicants may respond to those filings.
- Second, in some cases, based on their independent evaluation of the applications and the record, staff develop written requests for specific additional information from the applicants, some of which may be proprietary or otherwise confidential, and—if staff concludes such information is necessary to its review—may be made available to qualified third parties through a protective order.

The Commission has followed that customary procedure in this case by issuing (1) a Public Notice that establishes a timeline for petitions and comments, and (2) a protective order that establishes procedures for the submission and review of confidential and highly confidential information.⁴ Movants would fundamentally alter that process, with *Movants* (1) dictating the

⁴ *Tribune Media Company and Sinclair Broadcast Group, Inc., Consolidated Applications for Consent to Transfer Control*, Protective Order, DA 17-678 (July 14, 2017) (“Protective Order”).

pleading cycle and (2) propounding information requests. Movants seek this extraordinary relief even though they have participated in many transaction reviews and other proceedings under the Commission's established procedures, raised the same type of arguments that they suggest they intend to raise here, and otherwise zealously advocated for their interests.⁵

The appropriate vehicle for Movants to raise their concerns about the Applications is a petition to deny or comments based on the applications filed. And, under the Commission's established procedures and pursuant to the Public Notice, after the Applicants have responded, Movants will have an opportunity to submit reply comments.⁶ Additionally, as the Commission recently pointed out in addressing a similar request, Movants and others will have an ongoing opportunity to make *ex parte* presentations to the Commission even after the formal pleading cycle has ended.⁷ Movants fail to justify any departure from the Commission's transaction review procedures, and the Motion accordingly should be dismissed or denied.

⁵ See nn.12 & 13, *infra*.

⁶ Moreover, Movants have not established standing as "parties in interest" to this proceeding; the Motion should be dismissed on that ground alone.

⁷ See Public Notice; *see also Restoring Internet Freedom*, Order, WC Docket No. 17-108, DA 17-686, ¶ 5 (WCB July 17, 2017) ("*NHMC Extension Denial*") ("NHMC is free to address the relevance of any additional documents to this proceeding in its reply comments or in *ex parte* filings, as the docket in this proceeding does not close when the comment cycle has ended."). As has long been the case, the fact that parties filing petitions must address all "issues" about the transaction during the pleading cycle does not preclude filing of *ex parte* submissions concerning those issues after the close of the cycle. To the extent a new "issue" arises "based on new facts or newly discovered facts," established Commission practice allows the raising of that new issue in an *ex parte* filing within 15 days of discovery of such new facts. Other than conclusory statements, the Motion offers no basis for departing from this practice.

I. MOVANTS HAVE PROVIDED NO COMPELLING REASON TO EXTEND THE PETITION TO DENY OR COMMENT PERIOD.

The Commission's rules are clear that "[i]t is the policy of the Commission that extensions of time shall not be routinely granted."⁸ Movants fail to identify any reason, let alone a compelling one, warranting extension of the pleading cycle in this proceeding. Ceding to the Motion's generally applicable reasoning, untethered to any specific and compelling justification, would undermine the Commission's judicious policy on granting such extensions.

First, the Applications are complete as filed, and provide sufficient information to conduct a public interest analysis of the transaction. Second, Applicants today have provided Movants with all of the Confidential or Highly Confidential Information already submitted to the Commission pursuant to the terms of the Protective Order. Because this information is concise, was faithfully summarized in the more than 15-page discussion of failing station waivers contained in the Applications, and falls squarely within the Commission's specialized expertise, Movants' review of these materials does not warrant an extension of the petition to deny or comment period. Third, because this is a docketed proceeding, Movants will have ample opportunity to comment on the proposed transaction, and thus there is no need for an extension.⁹ As noted above,¹⁰ Movants and others will have the opportunity to submit reply comments and, thereafter, to make *ex parte* presentations to the Commission throughout the course of this proceeding.

⁸ 47 C.F.R § 1.46(a).

⁹ See *NHMC Extension Denial*, DA 17-686, ¶ 5.

¹⁰ See n.7, *supra*.

II. MOVANTS' INFORMATION REQUESTS ARE UNWARRANTED AND THEIR REQUEST TO EXTEND THE PERIOD FOR REPLIES TO OPPOSITIONS IS PREMATURE.

The Commission's rules governing broadcast transaction reviews provide no mechanism for third parties to propound discovery, yet Movants contend that the deadline for reply comments should be postponed until the Applicants have responded to twelve exceedingly broad requests for information and documents—information needed, according to Movants, to address purported concerns about the Transaction *before they have been raised in a petition to deny or comments*.¹¹ Notably absent from the Motion is a citation to any previous media transaction review in which the Commission adopted such an approach, and for good reason. Indeed, Movants have demonstrated in prior rulemaking proceedings¹² and reviews of media transactions¹³ that they are capable of raising arguments about the effects of the transaction based on the information presented in the Applications and other information in Movants' possession.

¹¹ Motion at 5-6, 8.

¹² See, e.g., Reply Comments of DISH Network L.L.C., MB Docket No. 15-216 (Jan. 14, 2016) ("DISH 2016 Reply Comments"); Comments of Public Knowledge and Open Technology Institute at New America, MB Docket No. 15-216 (Dec. 1, 2015); Notification of Ex Parte Communication of American Cable Association, Charter Communications, DIRECTV, DISH Network, New America Foundation, and Time Warner Cable in *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71 (Jan. 30, 2014); Letter from Ross Lieberman, ACA, *et al.*, to Marlene H. Dortch, FCC Secretary, MB Docket No. 09-182 *et al.* (Feb. 12, 2014) (signed by ACA, Charter Communications, DIRECTV, DISH, and Time Warner Cable) ("February 2014 *Ex Parte*").

¹³ See, e.g., Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57, at 3, 6-8, 10, 12-13 (March 18, 2016); Reply to Opposition of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57, at 5-6 (May 5, 2016).

Further, Movants fail to cite any precedent or legal authority or any other support for their broad request,¹⁴ or to provide any specific explanation connecting the request to the issues Movants ostensibly wish to address. Indeed, the information requests bear all the hallmarks of “a fishing expedition by interests groups and competitors to obtain market-sensitive information.”¹⁵ The Commission should decline to participate in such an expedition.

Movants contend, in particular, that their demand for access to Applicants’ retransmission consent agreements and related information meets the high standard set forth in the D.C. Circuit’s 2015 decision in *CBS Corp. v. FCC* for allowing third-party access to such materials, but they are wrong. The *CBS* ruling arose out of the Commission’s review of transactions in which it announced its intention to make certain programming and retransmission consent agreements with third parties, together with negotiation materials and other information, available for third party review—information that DISH and ACA, among others, insisted was “critical to analyses in the proceedings.”¹⁶ The D.C. Circuit ruled against the Commission, DISH and ACA, holding that disclosure of confidential business information to third parties would not be permitted unless it was “‘necessary’ to the Commission’s review process.”¹⁷

¹⁴ Movants cite Section 1.46(b) of the Commission’s Rules as the sole authority for the Motion. See Motion at 1. But Section 1.46 pertains to requests for extension of time and clearly does not authorize motions for “additional information and documents.”

¹⁵ *Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations*, Order, 29 FCC Rcd 14267, 14271 (2014) (dissenting statement of Commissioner Michael O’Rielly), *order vacated by CBS Corp. v. FCC*, 785 F.3d 699 (D.C. Cir. 2015).

¹⁶ *Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations*, Order, 29 FCC Rcd 11864, 11865-66 & n.10 (MB 2014).

¹⁷ *CBS*, 785 F.3d at 707.

In *CBS*, where information in retransmission consent agreements was at the heart the Commission's transaction review, the Commission nevertheless was able to evaluate the effects of the mergers at issue without making retransmission consent agreements or related information available for third party review.¹⁸ As then-Commissioner Pai observed, "[e]ven though the programming contracts were never disclosed, neither the Commission nor staff had any problem reaching a decision regarding the merits of the transactions."¹⁹ As with the analysis of financial data submitted in support of the reauthorization of failing station waivers,²⁰ the Commission and its staff are eminently capable of analyzing retransmission consent agreements in their role as an expert agency.

Nor does the Motion provide any support for its conclusory assertion that access to Applicants' retransmission consent agreements and related materials would be necessary for Movants to raise their concerns in this proceeding.²¹ Each of the Movants has actively participated in the Commission's prior rulemaking proceedings regarding retransmission consent issues without access to broadcasters' retransmission consent agreements.²² Most tellingly, in the Nexstar-Media General proceeding DISH and ACA made arguments identical to those foreshadowed by the Motion, relying entirely on industry analyses and Movants' specific

¹⁸ See *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Mem. Op. & Order, 30 FCC Rcd 9131, 9202 n.524 (2015).

¹⁹ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 30 FCC Rcd 10360, 10397 (2015) ("*Charter Protective Order*") (statement of Commissioner Ajit Pai approving in part and dissenting in part).

²⁰ See above at 4.

²¹ See Motion at 7.

²² See n.12, *supra*.

experiences with Nexstar and Media General stations—and apparently without seeking access to the applicants’ retransmission consent agreements.²³

CONCLUSION

For the reasons set forth above, the Motion should be dismissed or denied.

Respectfully submitted,

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July 19, 2017

²³ See n.13, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2017, I caused a copy of this Applicants' Joint Opposition to Motion for Additional Information and Documents and Extension of Time to be served by U.S. First Class mail, postage prepaid, upon the following:

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